

AMENDMENTS TO THE DIAGRAMS

The applicant will in later Continuation-in-Part proceedings utilize the species, diagrams and matters introduced in the non-elected species and diagrams therewith.

RESPONSE

Elections/Restrictions

5 The examiner has presently withdrawn claims 1 through 6 as being drawn to a non-elected species, based upon a telephone interview of 08/05/2004. The applicant will in due course present claims 1 through 6 in CIP proceedings. The applicant thanks the examiner and patent office for their efforts and opinions regarding patentably distinct species.

Information Disclosure Statement

10 The examiner thanks the examiner for consideration of the references of the IDS files 07/30/2004.

Drawings

15 The amendments to the claims made in a separate paper included herewith are believed to withdraw matters not present in the species/diagrams selected, thereby obviating the need to amend the diagrams to show the matters listed by the examiner. The applicant further notes that items on the examiner's list are present in the application as originally filed.

Claim Rejections – 35 USC Sec. 112

20 The examiner presently contends that claims 8 and 13 are indefinite. As both claims are presently withdrawn, the point is mooted for the present.

Claim Rejections – 35 USC Sec. 102 (re claims 7 through 10)

The examiner presently rejects claims 7 through 10 as being anticipated under 35 U.S.C. Sec. 102 by US Patent No. 6044954 (“the ‘954 patent” herein) to McLaughlin.

The ‘954 patent teaches a device which a combination automobile vacuum and air pressure dispenser. The applicant notes that the device does not even truly implicate bicycles, as the vacuum is not a useful device to offer to bicycle riders and thus teaches away from use of the device with bicycles and towards use with enclosed vehicles such as automobiles. Thus the applicant respectfully points out that the ‘954 patent’s device teaches away from combination with any device relating to bicycle repair.

In addition, the ‘954 fails to show a bicycle support. In the first office action, the examiner points to item 109 of the ‘954 patent as follows: “The patent to McLaughlin discloses a device which has a bicycle support 109...” However, supporting a bicycle from that device is never suggested nor supported by the disclosure of the ‘954 patent, and the words “bicycle support” are not used in that patent at all. On the contrary, the ‘954 patent teaches in diagram 1 (the exemplary diagram) that an air compressor hose is the use of a hook of the dimensions and configuration shown by item 109 of the ‘954 patent. The examiner’s sentence regarding item 109 continues “... which could be used to support a bicycle...”

The applicant very respectfully points out that items which “could be used to” are not substitutes for the actual wording of the claims at issue. The actual language Claim 7 as presently amended states: “...a bicycle support dimensioned and configured to support a standard bicycle suspended...”

The item 109 is NOT a bicycle support, nor is it dimensioned and configured to support a standard bicycle, suspended or otherwise. The single item 109 could not hold up both ends of a

bicycle while it is repaired, it has not portion which matches the circumference of any part of the bicycle frame or wheels, and it appears to have edges rather than rounds (thus the item 109 would contribute to paint damage of any bicycle brought into contact with it).

Thus the applicant very respectfully urges reconsideration and allowance of Claim 7 and those claims dependent therefrom.

Claim Rejections – 35 USC Sec. 102 (re claims 12 through 15)

The examiner presently rejects claims 12 through 15 as being anticipated by US Patent No.5857417 (“the ‘417 patent” herein) to Hart. The ‘417 is another air vending machine along the lines of the ‘954 patent, rather than a bicycle repair stand and vending machine. It also lacks any bicycle support.

The examiner points out that the ‘417 patent vends air. However, the examiner then states that air is “necessary equipment for bicycle use”.

First, the applicant would in general respectfully urge that air is not equipment. This reading of compressed air to be “equipment” does not appear to be facially reasonable.

Second, the applicant very respectfully points out that claim 12 in fact claims BOTH air AND products, thus clearly differentiating the two. The applicant is of course free to be his own lexicographer so long as he does not do actual violence to the plain meaning of the words selected. In claim 12, the applicant is drawing a distinction between the equipment products dispensed via vending and the actual devices of the invention itself. This use of the word “devices” versus the word “products” may be found in the single paragraph of the general summary, which states as follows in the second sentence: “The device of the machine combines a

bike rack, a tether and at least one bike tool secured to the device by the tether.” In the final sentence, the summary states: “Products dispensed may particularly include inner tubes, pumps, brake pads, nuts, bolts, tools, helmets, lights, safety devices, weather related gear and apparel, and merchandise for the rider as well as the bike.”

5 Thus, claim 12 claims two general and different types of limitations: first, a group of “equipment products” which are dispensed (vended, sold for the customer to take and own) and second “devices” which are “secur(ed)... in a manner sufficient to deter removal.”

 The applicant notes that the claim as originally drafted could have been susceptible to mis-understanding. Therefore, the applicant has amended the claim to more clearly divide
10 “equipment products” from “provided devices”.

 Without further belaboring this point, the applicant very respectfully requests reconsideration and allowance of Claim 12 and the claims dependent therefrom.

Claim Rejections – 35 USC 103

15 The examiner presently rejects claim 11 as being unpatentable over a combination of the ‘954 patent and the ‘417 patent.

 As noted previously, both the ‘954 patent and the ‘417 patent have no bicycle supports. Thus, this combination fails to disclose the entire set of limitations of claims 7 and 12, and thus claims dependent upon claims 7 or 12 are patentable, including claim 11.

20 Also as noted previously, the ‘954 patent does not even contain the word “bicycle” within its text and worse, the ‘954 patent teaches away from use with bicycles by providing a patently useless (to a bicycle rider at least) vacuum attachment. Thus, combination of the ‘954 patent

with any patent relating to bicycles is simply not proper.

Further 35 USC 103 Rejections

In the interest of speeding prosecution, the applicant will proactively consider a
5 hypothetical combination of the two patents cited to date and US Patent No. 5917407 to Squires
("the '407 patent"), also kindly provided by the examiner after her search.

The '407 patent teaches vending of bicycles for rental. It teaches that the front wheel of
the bicycle may be locked in a "bay" of a "rack" which raises the front wheel slightly off of the
ground. While the '954 patent teaches away from use with bicycles (the vacuum), the examiner
10 will of course consider a combination of the '407 and '417 patents.

As a preliminary matter, the applicant presently sees no suggestion for a combination of
the air compressor of the '417 patent with the "rack" of the '407 patent.

More importantly, the combination still lacks limitations of independent claims 7 and 12
of the present application.

15 First, no vending of bicycle products such as the list at the end of the General Summary
section of the disclosure is taught.

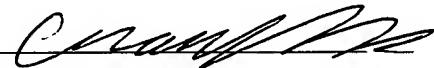
Second, the combination still fails to "suspend" a bicycle. At most, the rack of the '407
patent lifts the front wheel of a bicycle off of the ground by a few inches.

The combination also fails to teach provision of repair tools to the clientele and other
20 features of the various claims of the present application.

Thus the applicant would urge that the invention would be patentable over such a
hypothetical combination.

Conclusion

For all the foregoing reasons, applicant respectfully urges that the application is now in condition for immediate allowance, and such action is requested. The examiner is respectfully urged to contact applicant's counsel, Craig W. Barber, PO Box 16220, Golden, Colorado, 80402-6004, 303-278-9973, fax 303-278-9977, with any questions or comments.

Signed: 

Craig W. Barber
USPTO No. 39,102
303-278-9973
PO Box 16220
Golden, Colorado 80402-6004